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**ANALYSIS OF DESIGNATION OF PARTICIPANTS
UNDER SECTION 203 OF THE CIA RETIREMENT ACT**



December 1986

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PART I

INTRODUCTION

WHY THIS STUDY WAS MADE

This report is primarily a review of the manner in which the Central Intelligence Agency exercises its discretion to designate employees for participation in the Central Intelligence Agency Retirement and Disability System (CIARDS). It is the eleventh in a series of reports which the Agency submits annually to appropriate Committees of the Congress on its administration of the Central Intelligence Agency Retirement Act for Certain Employees. (U)

In 1964 the Congress enacted the Central Intelligence Agency Retirement Act For Certain Employees (50 U.S.C. 403). That Act authorized the Director of Central Intelligence to establish a retirement system that would apply to some, but not all, Agency employees. The law provided very broad guidelines under which the Director could exercise discretion to designate employees for participation. The Agency, by regulations, has made these guidelines more specific. (U)

An employee must perform at least sixty months of qualifying service to be eligible for participation in CIARDS. All overseas service is qualifying regardless of location or of type of duties performed. Overseas means outside the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. Domestic service is qualifying only if it meets rigid requirements involving hazard or the exercise of tradecraft, or if it is so sensitive or specialized that an employee cannot disclose his or her duties in order to qualify for other employment after retirement. (U)

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During the hearings that led to enactment of the CIA Retirement Act, both the Congress and the Agency made it clear that not all employees would participate in the new retirement system. It was generally understood that the system would cover about one-fourth to one-third of all Agency employees. (U)

In 1976, in the course of a hearing on a pending Bill, HR 13615, some members of the House Armed Services Committee expressed concern that the Agency might be designating more employees for participation in CIARDS than the Congress had intended. This concern was expressed in a directive to the Agency contained in the committee report on HR 13615.

'When the CIA Retirement Act was originally considered by Congress in 1964 particular attention was focused on section 203 of the Act, which authorizes the Director to designate 'such Agency officers and employees whose duties are determined by the Director to be (i) in support of Agency activities abroad hazardous to life or health or (ii) so specialized because of security requirements as to be clearly distinguishable from normal government employment, hereafter referred to as participants, who shall be entitled to the benefits of the system'. Essentially that provision was the basis for creating a separate retirement system and it was the intent of Congress that this system should apply to the relatively small percentage of Agency employees who were actually subjected to these very special hazards.

"During the course of consideration of this legislation there have been indications that in recent years there may have been deviations on the part of the Agency in administering this separate system from a strict application of the provisions of section 203 in designating officers and employees as participants in the CIA Retirement system in line with the original intent of Congress when that system was created.

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"Accordingly, in the exercise of its oversight function the Committee has directed that the CIA conduct a careful analysis of the application of the qualifying provisions of section 203 of the CIA Retirement Act in designating participants with reference to the special circumstances justifying their inclusion, and that the results of such analysis be reported to the Committee by the Director of Central Intelligence not later than October 1, 1976, and on an annual basis thereafter." (U)

The 1976 and 1977 reports were submitted to the House Armed Services Committee. Reports for later years were submitted to the House Permanent Select Committee on Intelligence, which now is charged with an oversight function with respect to the Central Intelligence Agency and which has expressed a desire that annual reports be continued. (U)

SCOPE OF THIS REPORT

This report covers the fiscal year beginning 1 October 1985 and ending 30 September 1986. It is intended primarily as a review of the discretion exercised by the Agency in designating employees for participation in the special CIARDS system, with particular reference to the law, the regulations, and Agency policy as established by decisions made over the years. Attention is focused on the handling of employee requests for approval of domestic service as qualifying for CIARDS. (U)

Statistical tables reflecting the end results of the Agency's operation of CIARDS show clearly that the system is consistently maintained for a limited number of Agency employees. (U)

Although not intended to be a complete historical presentation of CIARDS, the report deals briefly with some of the events during the year that affect administration of the System. (U)

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HOW THE STUDY WAS CONDUCTED

The writer had unrestricted access to all files and records containing information related to the Agency's administration of CIARDS. This includes individual case records and the minutes, as well as the verbatim transcripts of meetings of the CIA Retirement Board. The recorded information was supplemented by personal contact with Agency officials and employees whose duties and responsibilities include aspects of CIARDS Administration. (U)

HOW THE REPORT IS ORGANIZED

The report consists of five parts:

- PART I INTRODUCTION
- PART II QUALIFYING SERVICE
- PART III REVIEW OF 1986
- PART IV STATISTICAL DATA
- PART V FINDINGS AND CONCLUSION (U)

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PART II
QUALIFYING SERVICE

The Central Intelligence Agency Retirement Act of 1964 for Certain Employees contained very broad criteria for determining what service is qualifying for participation in this special retirement system. Section 203 reads in part as follows:

"The Director may designate from time to time such Agency officers and employees whose duties are determined by the Director to be (i) in support of Agency activities abroad hazardous to life or health or (ii) so specialized because of security requirements as to be clearly distinguishable from normal government employment, hereafter referred to as participants, who shall be entitled to the benefits of the system." (U)

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All service overseas, regardless of location or of duties performed, is qualifying for participation in CIARDS. (U)

Domestic service is qualifying only if it meets strict requirements of security or of personal hazard. Over 90% of retirees have been designated to CIARDS based on 60 or more months of overseas services. Only 1% of retirees have qualified based only on domestic service. The remaining 9% have qualified based on a mix of overseas and domestic service. (U)

Most of the service used to meet the requirement of 60 months to qualify for CIARDS participation is overseas service. For purposes of this report, all overseas service is counted even when it exceeds the 60 month requirement. Domestic service is not counted at all if the employee has enough overseas service to qualify, and in any case only the months of domestic service needed to bring the total qualifying service to 60 months are counted. (U)

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[] employees retired during the year under the provisions of CIARDS. Of these, [] or 91 percent had completed 60 or more months of service overseas, and used no domestic service to qualify.

[] employees used domestic service to qualify. [] of these employees had some overseas service. The [] employees who used a combination of overseas and domestic service, had an average of 39 months overseas. Only [] employees, or 1.2 percent of the [] retiring employees, had no overseas service but met the requirements by having completed 60 months of qualifying domestic service. []

The use of domestic service for retirement under CIARDS does not vary greatly from year to year. Last year, F.Y. 1985, [] retirees used domestic service to qualify, and, of those, only [] had no overseas service. Those who used a combination of overseas and domestic had an average of 37 months overseas. []

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During 1986, [] employees applied to the CIA Retirement Board for participation in CIARDS based at least in part of domestic service.

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[] of the [] were approved. Of the two applications disapproved, [] employee appealed and the appeal is still pending. (U)

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The Board has approved 75 percent of the [] applications for domestic service that it has considered since CIARDS began. Of the [] disapproved [] have appealed. The finding of the CIA Retirement Board has been reversed only 5 times. []

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Additional data on qualifying service are shown in TABLES A, B, C, D, E, F and G that follow. (U)

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PART III
REVIEW OF 1986

The Fiscal Year 1986 was relatively uneventful so far as changes affecting designations under Section 203 are concerned, but there was a major change in the benefits for employees hired since 1983. (U)

The CIA Retirement Board continued to function effectively despite some turnover of both Members and Staff. (U)

There were no changes in law, regulations, or Agency policy that will affect the exercise of discretion to designate employees under Section 203 or to determine what service is qualifying. (U)

The percentage of Agency employees who are participants in CIARDS continued to drop and reached a new low of 17.5 percent as of 30 September 1986. This compares with participation of 34.6 percent in 1974.

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The Central Intelligence Agency Spouses Retirement Equity Act of 1982 has not yet been amended to recognize certain more liberal provisions enacted in 1984 for employees who are under the Civil Service Retirement System. The Agency has prepared proposed legislation, to be introduced in 1987, that would amend CIARDS to be consistent with CSRS. (U)

Annuitants will receive a cost-of-living adjustment of 1.3 percent, effective 1 December 1986 and first reflected in checks issued in January 1987. (U)

The interest-free grace period for military service ended 30 September 1986. (U)

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A landmark change in the retirement system resulted from the introduction of Social Security coverage for employees hired since 1983. A new retirement system, the Federal Employees Retirement System (FERS), will provide benefits for Federal employees who also have Social Security coverage. In the future, Agency employees designated under Section 203, who also are covered by Social Security, will receive benefits from FERS. Employees who are in CIARDS, or are currently in CSRS but will eventually be designated to CIARDS, will have an opportunity to transfer to FERS between 1 July 1987 and 31 December 1987. (U)

One result will be that there may be less reason for employees to decline Section 203 designation. Currently, employees sometimes prefer CSRS over CIARDS because there is a higher limit on the maximum benefit or because there is no mandatory retirement age in CSRS (the CIARDS age is 60). Under FERS, there will be no maximum benefit, but there will still be a mandatory retirement age. Employees will have to contribute 0.5% of pay more for FERS Special than for FERS, but the potential benefit is higher by 14% of high-three pay. CIARDS is only higher than CSRS by 3.75% of high-three pay. (U)

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CIA RETIREMENT BOARD

When the CIA Retirement Act was passed in 1964, the Director of Central Intelligence delegated to the Director of Personnel authority to act for him in a number of areas of administration of the new retirement system. These include authority to:

- (a) determine what services of employees are qualifying for CIARDS participation;
- (b) designate employees for participation, and
- (c) approve retirements under CIARDS. (U)

The CIA Retirement Board was established in 1964 to assist the Director of Personnel in exercising authority delegated to him. Technically the CIA Retirement Board does not make final decisions on CIARDS matters, but makes recommendations that become decisions when approved by the Director of Personnel. (U)

The Director of Personnel appoints a Chairman and four other members of the Board. Each member is a senior official of the Agency and each represents a Directorate. (U)

The Board is assisted by staff consisting of (a) a Legal Adviser, (b) a Technical Adviser, (c) an Executive Secretary, and (d) a Recording Secretary who produces verbatim transcript of the proceedings of each meeting. All of the staff members attend Board meetings but do not have a vote. (U)

The most difficult task assigned to the CIA Retirement Board is the determination of whether a period of service is qualifying for CIARDS purposes. This requires a knowledge of the law and the regulations as well as some familiarity with how individual cases have been decided over the twenty-two year history of the system. Turnover can be a substantial problem for an advisory board dealing with highly technical subject matter with which new Members have little or no background or experience. (U)

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During the fiscal year that ended 30 September 1986, one Member was replaced. The Board now consists of a Chairman appointed in January of 1985 and four other Members appointed in August of 1983; April of 1984; January of 1985; and July 1986. (U)

The Director of Personnel and two Members of the Board are participants in CIARDS, while the Chairman and the other two Members are in the Civil Service Retirement System. (U)

The Executive Secretary was appointed in F.Y. 1983, and the Recording Secretary has assisted the Board for at least the past eleven years. The other two staff members - the Technical Adviser was replaced during F.Y. 1986 and the Legal Adviser - was replaced during F.Y. 1985. (U)

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ACTIONS OF BOARD

The CIA Retirement Board held six regular meetings during the year, ranging in length from twenty-five minutes to two hours. Total Board meeting time was six hours and fifty-five minutes. Recommendations to the Director of Personnel resulted in the following actions:

[redacted] designations for CIARDS participation
[redacted] domestic service cases allowed
[redacted] domestic service cases disallowed
[redacted] retirements (U)

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For most cases, the designation has become routine because 22 years have elapsed since the enactment of CIARDS; and it has been ten years since the change to designation only after 60 months of service. (U)

For each period of overseas service, a form is submitted to the Qualification Section for maintaining records of total overseas service performed by Agency employees. For PCS overseas periods, the overseas service is the elapsed time between the beginning and ending date of the PCS duty. For TDY, credit is given from date of arrival at post to date of departure from post. (U)

With one exception, the designation is based on the overseas location of the PCS or TDY assignment. The exception, implemented in 1986, is to permit full time overseas service for [redacted] employees serving as "Rovers". These employees spend over 90% of their time overseas but, since they rove among different posts for relatively short periods, their official station is designated to an "overseas undetermined" category. The location of duty of the rovers will be monitored by the Agency to assure that the proportion overseas remains above 90%. [redacted]

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The overseas service is accumulated by computer and, when it totals more than five years, is reported to the Executive Secretary of the Board. The Executive Secretary reviews the case for satisfaction of other criteria and then prepares a list for routine approval at the succeeding Board meeting. (U)

Employees who need domestic service to meet the 60 months criteria follow a different procedure. The employee prepares a request for certification and channels the request through the employee's office head and head of the Directorate who has career responsibility for the position, to the Director of Personnel. The Director of Personnel sends the request to the Executive Secretary who then reviews the case to make sure that all domestic service is supported by the facts of the case and that any overseas service is identified. These cases are then presented to the Board for review, and approval or disapproval. (U)

Since the designations based on 60 or more months overseas has become routine, the focus of this report is on the employees who have been designated with less than 60 months overseas.

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The Board relies on the review process to establish the validity of the description of the service being claimed as qualifying service. For instance, the proportion of domestic service stated as being qualifying is reviewed by the employee's office head and the head of the Directorate. A final check is performed by the Executive Secretary. The facts of the case can usually be supported by the periodic performance reviews in the employees' file. In one category, DCI Protective Staff, the proportion has been established as 70%.

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One of the duties of the Executive Secretary is to make sure that the requirements are met. A review of the files and discussions with the Executive Secretary, confirmed that these conditions were met. One requirement, that the employee be under age 60, was pertinent in one case considered in 1986. The individual was actually over age 60 when the case was considered but it was clearly established and noted that the 60 months of overseas services had been achieved before age 60.

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CHANGES IN THE CIA RETIREMENT ACT

The Central Intelligence Agency Retirement Act for Certain Employees may be amended in either of two ways:

1. Directly by enactment of an Act of Congress, or
2. Indirectly by enactment of an amendment to the Civil Service Retirement Act, followed by issuance of an Executive Order to conform the CIA Retirement Act to the revised provisions. (U)

The final step in the process of amendment is to revise Agency Regulations to reflect the new provisions. (U)

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The Central Intelligence Agency Retirement Act was amended by Public Law 99-335. The primary purpose of the Act was to create the new Federal Employees' Retirement System (FERS). FERS benefits will extend to all Agency employees who first entered Federal employment after 31 December 1983 and to other employees who transfer into FERS during the 1987 open season. Employees who are designated under Section 203, and who are covered by FERS, will receive special retirement benefits consistent with CIARDS. P.L. 99-335 also made necessary conforming changes to CIARDS to accommodate FERS. (U)

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EXECUTIVE ORDERS

There were no Executive Orders to conform CIARDS to legislation enacted to amend the Civil Service Retirement Act issued during fiscal year 1986. (U)

The most recent Executive Order was Executive Order 12485 issued 13 July 1984, and this order brought CIARDS up to date with all CSR amendments. (U)

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ANNUITY COLAS

During fiscal year 1986 there were no changes in the provisions of law affecting cost-of-living annuity adjustments. (U)

The amount of a COLA for any year is the increase of the average Consumer Price Index (CPI) for the third calendar quarter of that year over the average CPI for the third calendar quarter of the preceding year. The average is obtained by adding the CPI for the months of July, August, and September and dividing the sum by three. The increases are granted effective December 1 of each year. Annuitants will receive a 1.3 percent effective 1 December 1986 and first paid in annuity checks issued in January of 1987. (U)

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PART IV
STATISTICAL DATA

The tables which follow, most of which are self-explanatory and require little or no narrative, reflect the end results of the Agency's administration of CIARDS. In some instances statistics for the Fiscal Year 1986 are augmented by figures for other years for purposes of comparison or to show total experience since the System began. (U)

PARTICIPATION IN CIARDS

While not prescribed by law or regulation, Congress and the Agency intended to limit participation in CIARDS to approximately 30 percent of employees. (U)

All new employees of the Agency are under Federal Employees' Retirement System (FERS) or Civil Service Retirement (CSR) until they qualify for participation in CIARDS or FERS Special Category. (U)

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In 1976 the regulations were revised to require 60 months of qualifying service before an employee may be designated for participation. Once designated, an employee continues to be a participant unless he or she elects to revert to coverage under CSRS or FERS. (U)

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Participation has dropped sharply since the regulations were changed in 1976. As of 30 September 1986, only [] percent of Agency employees are participants in CIARDS. This is the lowest participation since the original designations were processed in 1965. From 1970 through 1976, there were an average of [] designations a year. From 1977 through 1981, the number of designations averaged [] a year. This sharp drop reflected the fact that few employees would have accumulated 60 months within the five years after the change in policy.

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Since 1981, there have been an average of [] designations a year. This increase over the earlier average of [] reflects a return to normality following the artificially depressed years of 1977 through 1981. There should be some increase in the number of designations in the future as the added hires which have increased Agency strength since 1981 move through the 60 months needed to qualify. However, there should not be any major long-term change in the average number of designations, because the basic 60 month rule has not changed since 1976. See TABLE 1.

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CHANGE IN NUMBER OF CIARDS PARTICIPANTS

There have been an average of [] retirees and deaths-in-service in each of the last five years, compared to the average of [] designations a year in the same period. Since these data do not include terminations before retirement, there has actually been a decline in the total number of participants. Table 1 confirms a slight decline in the number of participants over the last five years; from [] in 30 September 1980 to [] on 30 September 1986. Because of lags in reporting, Table 1 data do not directly correspond to the net change in designations, but the trends of net changes and total CIARDS participants is consistent. []

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CIARDS RETIREMENT ELIGIBILITY

Forty-eight percent of current CIARDS participants are eligible to retire. This includes 25 percent who could retire voluntarily at their own option, and another 23 percent who would be entitled to immediate annuity if involuntarily separated. The remaining 52 percent have not met eligibility requirements for either voluntary or involuntary retirement.

See TABLE 3. []

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RETIREMENTS IN FISCAL YEAR 1986

More Agency employees retired under the CIA Retirement and Disability System than under the Civil Service Retirement System. The Directorates of Operations and Administration provide 77 percent of CIARDS retirements, but only 59 percent of retirements under CSR. See TABLE 4. []

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The primary argument for establishment of CIARDS was the perceived need to retire certain employees at ages earlier than those experienced under CSR. CIARDS still meets that need by producing an average age of 54.1 years at retirement, compared with the CSR average age of 59.0 years.

Of all CIARDS retirements, 2.3 percent were under age 50, 25.4 percent were at age 50; 34.6 percent were at age 51 through 55; and 37.7 percent were age 56 or older. See TABLE 5 []

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There were [] mandatory age retirements under CIARDS in in F.Y. 1986. Their service ranged from 17 years to 37 years. []

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[] retirees, which is 90 percent of the total [] retired voluntarily. There were [] disability retirements, [] involuntary retirements and [] deferred who retired with rights. []

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Eighty-nine percent of CIARDS retirees had completed 25 or more years of service, and 59 percent had 30 years or more. CIARDS retirees in 1986 averaged 30.2 years of service. See TABLE 6. []

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Employees who are participants in CIARDS may retire voluntarily if they have attained age 50 and have at least 20 years of service. All of those who retired in F.Y. 1986 under this provision had more than the required 20 years. The [] retiring employees who were age 50 averaged 27.4 years of service. See TABLE 7. []

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RETIREMENTS FROM 1965 TO 30 SEPTEMBER 1986

CIARDS retirements have totalled [] since the program began. As might be expected, the majority of retirements have been voluntary; [] or 70 percent have been voluntary. [] or 13 percent have been involuntary; [] or 8 percent were mandatory for age; [] or 9 percent were for disability. [] employees (less than one percent) were not eligible for immediate annuity when separated, but later qualified for deferred annuities. In addition, [] CIARDS participants died in service. See TABLE 8. []

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Of the [] employees who have retired under CIARDS, [] were still receiving annuity as of 30 September 1986. []

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[] survivors of CIARDS employees and retirees were also receiving annuities at the end of the fiscal year. []

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From 1965 through 1986, [] Agency employees retired under the Civil Service Retirement System. This is [] more than CIARDS retirements for the same period. CSR retirements break down into 46 percent under the optional provision; 26 percent for discontinued service; 18 percent for disability; and 10 percent mandatory for age. There were no mandatory retirements during F.Y. 1986. See TABLE 9. []

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About half of retirements are under CIARDS. In the last two years, more employees had retired under CSRS than under CIARDS; this F.Y., more employees retired under CIARDS. While only 17.5 percent of Agency employees are CIARDS participants, 54 percent of Agency retirements were under CIARDS. See TABLE 10.

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For Fiscal Year 1986 the average employee retiring under CIARDS was almost five years younger than the average CSR retiree. The objective of maintaining a young and vigorous work force of employees assigned to carry out the principal mission of the Agency is still being served well by earlier retirements under CIARDS. See TABLE 11.

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In F.Y. 1986, 27 percent of CIARDS retirees were age 50 and under; 64 percent were age 51 through 59; 9 percent were 60 and over. A total of 48 percent of CSR retirees had reached age 60 or over. See TABLE 12.

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Of all Agency employees retiring in F.Y. 1986, 77 percent were at GS-12 or above, and 70 percent were at GS-13 or above. Eighty-nine percent of CIARDS retirements were at GS-12 and above; 82 percent were at GS-13 and above. See TABLES 13 and 14.

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AGE COMPARISONS

See TABLES 15, 16, 17, and 18 for comparisons of age and grade for active Agency employees including data for past years and projections for the future. (U)

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PART V

FINDINGS AND CONCLUSION

FINDINGS

1. The number of Agency employees designated as participants continues to drop, reaching a new low of 17.5% in Fiscal Year 1986. Under current practice in staffing and designations, participation in future years will never exceed the approximate thirty percent originally contemplated by the Agency and the Congress. 25X1
2. About half of current retirements by Agency employees are under CIARDS. Less than Agency employees are under CIARDS; but fifty-four percent of retirements were under CIARDS. 25X1
25X1
3. An important justification for the CIARDS system is the need to retire certain employees at ages younger than are normally experienced under the Civil Service Retirement System. The success of this policy is shown by the fact that retirements under CIARDS averaged nearly five years younger than those under Civil Service Retirement. The average age of retirement under CIARDS during 1986 was 54.1 years. 25X1
4. During 1986 there were no changes in law, regulations, or Agency policy that will have any bearing on the Agency's discretion to designate employees for participation in CIARDS. The same criteria will be used in the future to designate employees for participation in the special benefits of FERS. 25X1

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CONCLUSION

The Agency continues to administer the Central Intelligence Agency Retirement and Disability System as a system for a limited number of employees, as intended by Congress and by the Agency when the enabling legislation was enacted in 1964. (U)

The CIA Retirement Board continues strict application of the law and the regulations when determining what service is qualifying for CIARDS purposes, and observes Agency policy as established by precedent decisions. (U)

Extensive review revealed no deviations or exceptions from the law, the regulations, or established Agency policy during the fiscal year ending 30 September 1986. (U)

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